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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,871	05/22/2001	Yves Patrick Lajouanie	59828264-5	1076
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BAKER & MCKENZIE LLP 805 THIRD AVENUE - 29TH FLOOR NEW YORK, NY 10022			EXAMINER STERRETT, JONATHAN G	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/862,871	<b>Applicant(s)</b> LAJOUANIE, YVES PATRICK	
	<b>Examiner</b> Jonathan G. Sterrett	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/22/2001</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Summary*

1. Claims 1-25 are pending in the application.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 1-16** are rejected under 35 U.S.C. 101 because the invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts: and
- (2) whether the invention produces a useful, concrete and tangible result.

4. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, none of **Claims 1-16** are directed to anything in the technological arts as explained above. Specifically for Claims 1 & 10, the limitation "analyzing the business activity" is cited. This limitation can be performed manually without utilizing technological elements. Further in Claims 1 & 10, the selection of a business performance model for monitoring

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the performance of a business activity is performed. In Claim 10, the selection of a category of users from a predefined category of users is performed. These limitations can be performed manually without utilizing technological elements. Looking at the claims as a whole, nothing in the body of the claims recites any structure or functionality to suggest that a computer or any technology performs the recited steps. Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention provides a method and system for monitoring the performance of a business activity, which is a useful, concrete and tangible result. Although the recited process produces a useful, concrete and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, **Claims 1-16** are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 3-5** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding **Claims 3-5**, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 1-5, 10-12, 14, 16, 17, 20 and 22-25** are rejected under 35 U.S.C. 102(e) as being anticipated by **Bonabeau US2001/0053991**.

Regarding **Claim 1**, Bonabeau discloses:

**analyzing the business activity; and**

Page 2 paragraph 19 line 1-4, analysis component provides information on why business is successful.

**selecting at least one predefined business performance model from a plurality of predefined business performance models for monitoring the performance of the business activity.**

Page 8 paragraph 86 line 1-3, business performance models are illustrated as models 11 and 13.

Page 9 paragraph 97 line 1-7, business models are ranked in a business ecosystem based on the performance of their associated performance models. For this ranking to occur, predefined business performance models are selected to monitor the

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performance of a business model in the ecosystem – see figure 6 #3 performance models are selected – in this case four potential models are selected.

Regarding **Claim 2**, Bonabeau discloses:

**Wherein the plurality of predefined business performance models is a first business performance model, a second business performance model and a third business performance model.**

Page 2 paragraph 23 line 4-7, Value proposition (VP)'s describe output values provided by businesses.

Page 11 paragraph 110 line 1-3, Value propositions (VP)s are composed of building blocks that are assembled to create an overall business performance model for a particular business, including but not limited to a first, second and third, business performance model.

Figure 6 #3 shows a first, second, and third business performance model labeled M1, M2 and M3 respectively.

Regarding **Claim 3**, Bonabeau discloses:

**Wherein the first business performance model can be used to monitor the performance of at least one business activity involving at least one user accessing a service in order to perform at least one transaction requiring an immediate response.**

Page 11 paragraph 111, Business model uses a value proposition, VP, of connection speeds to the internet.

Page 11 paragraph 119, Business model uses a value proposition, VP, of user downloads, that is, a user downloading something from the internet. This is a transaction requiring an immediate response, because the user selects an item to be downloaded, a webpage or data, and that selection requires an immediate response.

Page 11 paragraph 144, the customer model that determines the success of the business model is 'sensitivity to quality of service' for example, response time to internet interaction. The business performance model is used to monitor the performance of at least one business activity, in this case 'response time' to internet activity, which is at least one activity involving at least one user accessing a service to perform at least one transaction requiring an immediate response.

Regarding **Claim 4**, Bonabeau discloses:

**Wherein the second business performance model can be used to monitor the performance of at least one business activity involving a flow of data having to be processed through at least one application and then distributed.**

Figure 6 shows four business models for monitoring performance which according to page 11 paragraph 110, can be composed of a number of value propositions, including, mailbox usage.

Page 11 paragraph 116, mailbox usage value proposition is a building block to a performance model that is a business activity involving a flow of data having to be processed through at least one application and then distributed.

Regarding **Claim 5**, Bonabeau discloses:

**Wherein the third business performance model can be used to monitor the performance of at least one business activity involving at least one operation that needs to be completed before a predetermined time.**

Figure 6 shows four business models for monitoring performance which according to page 11 paragraph 110, can be composed of a number of value propositions, including, limited connection time to the internet.

Page 11 paragraph 113, limited connection time. The user has a limited time to at least log on to the ISP and be connected. The logging on and any ISP activity would have to be completed prior to a predetermined time specified by the amount of their limited connection time.

Regarding **Claim 10**, Bonabeau discloses all of the limitations above in Claim 1, except for:

**Selecting a predefined category of users from a plurality of predefined category of users.**



Page 11 paragraph 139 line 1-5, the customer model is used to determine predefined categories of users. These users are segmented by their customer model parameters – see page 11 paragraph 140.

Page 11 paragraph 140 –paragraph 149, these are parameters used to define predefined categories of users in a similar way to how VP's (page 11 paragraph 110) determine the building blocks of business models.

Regarding **Claim 11**, Bonabeau discloses:

**Generating an interface based on a least the selected at least one predefined business performance model and the selected predefined category of users for illustrating the performance of the business activity.**

Figure 12A and Figure 12B are interfaces based on predefined business performance models and for the selected predefined category of users for illustrating the performance of the business activity. In this case the business activity being illustrated is average monthly ISP billing. Figure 12B illustrates a variety of business performance metrics.

Regarding **Claim 12**, Bonabeau discloses:

**the interface is selected from a plurality of predefined interfaces.**

Page 14 paragraph 191, Figure 12B illustrates interfaces which are selected from a plurality of predefined interfaces. These predefined interfaces illustrate the

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performance of the business activity. These show how the various businesses perform in the economic ecosystem.

**Claims 14, 16, 17, 20 and 22-25** recites limitations handled by the rejections of **Claims 1-5 and 10-12** above, therefore the same rejection applies.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 6-9, 13, 15, 18, 19 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonabeau in view of Van der Aalst.

Van der Aalst, W.M.P., "The Application of Petri Nets to Workflow Management", The Journal of Circuits, Systems, and Computers, pp.1-53.

Regarding **Claim 6**, Bonabeau teaches:

A first, second and third business performance model, as discussed above.  
Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

**The first, second, and the third business performance model each**

**include a plurality of predefined sub-processes.**

Van der Aalst teaches processes having sub-processes (Page 14 paragraph 3 line 1-5) and that high level processes can be modeled to include more detailed sub-processes. Van der Aalst teaches that using hierarchy in modeling processes and subprocesses allows subprocesses to provide the necessary complexity and detail reflected by real world processes (Page 13 paragraph 3.2 line 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include models having a plurality of predefined sub-processes, as taught by Van der Aalst, because it would provide the ability to better model business performance using subprocesses that provide necessary complexity reflected in real world processes.

Regarding **Claim 7**, Bonabeau teaches:

A first, second and third business performance model, as discussed above. Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

**Wherein the plurality of predefined sub-processes for the first business performance model, for the second business performance model and for the third**

**business performance model include a first sub-process, a second sub-process and a third sub-process.**

Van der Aalst teaches:

**Wherein the plurality of predefined sub-processes for the first business performance model, for the second business performance model and for the third business performance model include a first sub-process, a second sub-process and a third sub-process.**

Page 14 paragraph 3 line 4-6, subnets or subprocesses contain subsystems. The hierarchy here taught by Van der Aalst allows for complex models of processes to be built in layers, allowing for a high level of complexity without having one layer that is too complex to understand. This would include any number of subprocesses including a first, second, and third subprocess. The hierarchy of Petri nets as applied to modeling business processes allows for an unlimited number of hierarchies and an unlimited number of subprocesses including a first, second and third subprocess.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include models having a plurality of predefined sub-processes, including a first, second and third subprocess, as taught by Van der Aalst, because it would provide the ability to model business performance using subprocesses that provide necessary complexity

Regarding **Claim 8**, Bonabeau teaches:

A first, second and third business performance model, as discussed above.

Each business performance model is based upon a building block of a value proposition.

Bonabeau does not teach:

**Wherein the plurality of predefined sub-processes of the first business performance model, the second business performance model and the third business performance model each include one or more predefined metrics.**

Van der Aalst teaches:

**Wherein the plurality of predefined sub-processes of the first business performance model, the second business performance model and the third business performance model each include one or more predefined metrics.**

As discussed above, Van der Aalst teaches the use of subprocesses and hierarchies modeled using Petri nets to model workflow processes.

Page 32 paragraph 3 line 5-7, Van der Aalst teaches using a variety of key performance metrics, e.g. average throughput and average waiting time. These apply to any and all subprocesses within a workflow management process including various hierarchies of a process.

Van der Aalst teaches that performance analysis enables an organization to meet requirements with respect to throughput, service levels and resource utilization. (page 32 paragraph 1 line 6-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include using performance metrics for each of the subprocesses, as taught by Van der Aalst, because it would enable an organization to meet requirements with respect to throughput service levels and resource utilization.

Regarding **Claim 9**, Bonabeau teaches:

Modeling business performance using models based on modules, as discussed above. Bonabeau also teaches using Petri nets, which are models of processes, to model customer behavior (page 9 paragraph 95 line 1-2).

Bonabeau does not teach:

**Wherein the business activity is a business process.**

Van der Aalst teaches:

**Wherein the business activity is a business process.**

Page 1 paragraph 1 line 1-2. workflow management is a way to control business processes.

Page 1 paragraph 2 line 1-3, IS systems need to support the business processes and not just the tasks. Van der Aalst teaches that the business processes and tasks are activities in the business.

Page 22 paragraph 4.3 line 6-7, tasks are activities that make up steps in a workflow process – in this example an employee is executing a task.

Van der Aalst teaches that because of the complex nature of businesses, there is a need to apply workflow management tools to model the business activity as a process and use WFMS tools to manage the process.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bonabeau regarding using business performance models to include wherein the business activity is a business process, as taught by Van der Aalst, because it would enable an organization to effectively manage business activities that are complex in nature by modeling them after processes.

**Claims 13, 15, 18, 19 and 21** recite limitations handled by the rejections of **Claims 6-9** above, therefore the same rejection applies.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hemker US 5956662 discloses a method for load measurement of computers in networked systems.

Kalkunte US 6249886 discloses a computer system and computer implemented process for performing user-defined tests of a client-server system with run time compilation of test results.

Sherman US 6434513 discloses a method of load testing web applications based on performance goal.

Sanders US 6574605 discloses a method and system for strategic services enterprise workload management.

Myers US 6601020 discloses a system for load testing coordination over a network.

Alsup US 6668275 discloses a system and method for multiprocessor management.

Fraenkel US 6738933 discloses an approach for root cause analysis of server system performance degradations.

La Cascia US 6772107 discloses a system and method for simulating activity on a computer network.

Myers US 6775644 discloses a system for load testing coordination over a network.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS 4-25-05



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